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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission: Department of Commerce and Insurance
Division: Insurance
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Revision Type (check all that apply):
x Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	**Chapter Title**
0780-01-84	Medical and Professional Malpractice Claims and Expense Reporting
Rule Number	**Rule Title**
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0780-01-84-.02	Scope
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Chapter 0780-01-84
Medical and Professional Malpractice Claims and Expense Reporting

Amendments

0780-01-84 Medical and Professional Malpractice Claims and Expense Reporting is amended by deleting the Chapter in its entirety and substituting the following language so that as amended the Chapter shall read:

Chapter 0780-01-84
Medical and Professional Malpractice Claims and Expense Reporting

Table of Contents

0780-01-84-.01 Purpose

The purpose of this Chapter is to provide a reporting form and instructions for insuring entities, self-insurers, facilities and providers to submit reports required to be filed with the commissioner pursuant to T.C.A. §§ 56-54-101, *et seq.*

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.02 Scope

This Chapter shall apply to all persons that meet the definition of a reporting entity under Rule 0780-01-84-.04, and shall apply to all medical malpractice claims in this state, regardless of whether or how they are covered by medical professional liability insurance. This Chapter shall not apply to the state or those employed by the state to the extent that their medical malpractice liability is not covered by an insurance entity.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.03 Authority

This Chapter is promulgated pursuant to the authority granted the commissioner under T.C.A. §§ 56-54-101, *et seq.*

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.04 Definitions

As used in this Chapter, unless the context otherwise requires:

(1) "Claim" means:

(a) A demand for monetary damages for injury or death caused by medical malpractice; or

(b) A voluntary indemnity payment for injury or death caused by medical malpractice.

(2) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(3) "Closed claim" means a claim that has been settled or otherwise disposed of by the insuring entity, self-insurer, facility or provider. A claim may be closed with or without an indemnity payment to a claimant.

(4) "Commissioner" means the commissioner of commerce and insurance.

(5) "Companion claims" means separate claims involving the same incident of medical malpractice made against other providers or facilities.

(6) "Department" means the Tennessee Department of Commerce and Insurance.

(7) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, and loss of business or employment opportunities.

(8) "Health care facility" or "facility" means an entity licensed under Title 68, including a clinic, diagnostic center, hospital, laboratory, mental health center, nursing home, office, surgical facility, treatment facility, or similar place where a health care provider provides health care to patients.

(9) "Health care provider" or "provider" means:

(a) A person licensed in either title 63, except chapter 12, or 68 to provide health care or related services including, but not limited to, an acupuncturist, a physician, a surgeon, an osteopathic physician, a dentist, a nurse, an optometrist, a podiatrist, a chiropractor, a physical therapist, a psychologist, a pharmacist, an optician, a physician assistant, a certified professional midwife, an orthopedic physician assistant, or a nurse practitioner. If

the person is deceased, this includes his or her estate or personal representative; or

(b) An employee or agent of a person described in subparagraph (a) of this Paragraph, acting in the course and scope of his or her employment. If the employee or agent is deceased, this includes his or her estate or personal representative.

(10) "Insurance entity" or "insuring entity" means:

(a) An authorized insurer;

(b) A captive insurer;

(c) A joint underwriting association;

(d) A patient compensation fund;

(e) A risk retention group; or

(f) An unauthorized insurer that provides surplus lines coverage.

(11) "Medical malpractice" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services.

(12) "Noneconomic damages" means subjective, nonmonetary losses, including pain, suffering, inconvenience, mental anguish, disability, or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, humiliation and injury to reputation, and destruction of the parent-child relationship.

(13) "Pending Claims" means claims that have not been paid pursuant to a settlement or judgment but have been made known to the reporting entity either by a lawsuit or some other manner.

(14) "Person" means an individual or business entity.

(15) "Reporting entity" means the following:

(a) Every insurance entity providing medical malpractice insurance or professional liability insurance to a Tennessee health care institution licensed under Title 68;

(b) Every insurance entity providing medical malpractice insurance or professional liability insurance to any health care provider or health care facility;

(c) Every health care institution licensed pursuant to Title 68 or professional listed in this Rule, except the state and

those employed by the state, who does not maintain professional liability insurance; or

(d) Counsel for claimants who are required to submit information as required by T.C.A. §§ 56-54-101, *et seq.* and 2008 Tenn. Pub. Act Ch. 1009, for the purposes of levying civil penalties pursuant to Rule 0780-01-84-.06.

(16) "Self-insurer" means any health care provider, facility, or other individual or entity that assumes operational or financial risk for claims of medical malpractice.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.05 Annual Claims Data Submission Requirement

(1) All reporting entities, with the exception of those enumerated in Rule 0780-01-84-.04(15)(d) shall individually submit to the commissioner by March 1 of every year, a claims data file containing all information required by this Chapter for medical or professional malpractice claims and expenses for all claims open and pending as of the last day of the preceding calendar year, and those claims closed in the preceding calendar year and any adjustments to data reported in prior years. Additionally, all reporting entities shall separately list the total from the inception date of any filed claim those damages and defense expenses found in subparagraph (l) of Paragraph (3) this Rule.

(2) The claims data file shall be comprised of two (2) data sheets--the Closed Claims Sheet and the Pending Claims Sheet, as set forth and explained in more detail in Appendix A. To the greatest extent possible, the format and coding protocol shall be consistent with the format and coding protocol for data reported to the National Practitioner Data Bank.

(3) Each claims data file sheet shall contain the following data as set forth and explained in more detail in Appendix A listed by medical specialty of provider, if any:

(a) The name of the reporting insuring entity, self-insurer, facility or provider;

(b) The address of the reporting insuring entity, self-insurer, facility or provider;

(c) The name, telephone number and electronic mail address of a contact person for the reporting insuring entity, self-insurer, facility or provider;

(d) Claim and incident identifiers, including:

1. A claim identifier assigned to the claim by the insuring entity, self-insurer, facility or provider; and

2. An incident identifier if companion claims have been made by a claimant;

(e) The policy limits of the medical professional liability insurance policy covering the claim;

(f) License number of health care institution or professional;

(g) Information about the health care facility where the incident occurred, including:

1. The type of health care facility where the medical malpractice incident occurred;

2. The primary location within a facility where the medical malpractice incident occurred; and

3. The geographic location, by city and county, where the medical malpractice incident occurred;

(h) Information about the claimant, including:

1. The injured person's sex and age on the incident date;

2. Claimant's social security number, to the extent that the claimant's social security number is available to the reporting entity; and

3. The severity of malpractice injury using the National Practitioner Data Bank severity scale;

(i) The following significant dates:

1. The date of the incident that was the proximate cause of the claim;

2. The date notice was given to the insuring entity, self-insurer, facility or provider;

3. The date a suit was filed, if any was filed;

4. The date of the final indemnity payment, if any; and

5. The date of the final action by the insuring entity, self-insurer, facility or provider to close the action if the action has been closed;

(j) Information about the damages asserted by the claimant, listed separately:

1. Damages asserted by the claimant other than amounts asserted by a lawsuit; and

2. Damages asserted by the claimant through a lawsuit; if damages are asserted by the claimant through a lawsuit, the date of the filing of the lawsuit;

(k) Settlement information that identifies the timing and final method of claim disposition, including:

1. Claims settled by the parties;

2. Claims disposed of by a court, including the date disposed;

3. Claims disposed of by alternative dispute resolution, such as arbitration, mediation, private trial, and other common dispute resolution methods; and

4. Whether the settlement occurred before or after trial, if a trial occurred;

(l) Specific information about indemnity payments and defense and cost containment expenses, including:

1. For claims disposed of by a court that result in a verdict or judgment that itemizes damages:

(i) The total verdict or judgment;

(ii) If there is more than one (1) defendant, the total indemnity paid by or on behalf of this facility or provider;

(iii) Economic damages;

(iv) Noneconomic damages;

(v) Punitive damages, if applicable; and

(vi) Defense and cost containment expenses, including court costs, attorneys' fees, and costs of expert witnesses; and

2. For claims that do not result in a verdict or judgment that itemizes damages:

(i) The total amount of settlement;

(ii) If there is more than one (1) defendant, the total indemnity paid by or on behalf of this facility or provider;

(iii) The insuring entity's or self-insurer's best estimate of economic damages included in the settlement;

(iv) The insuring entity's or self-insurer's best estimate of noneconomic damages included in the settlement;

(v) Defense and cost containment expenses, including court costs, attorneys' fees, and costs of expert witnesses; and

(vi) Amounts paid in connection with other legal expenses not previously identified;

(m) The reason for the medical malpractice claim. The reporting entity must use the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank;

(n) The name of the attorney(s) representing the claimant for those claims on which amounts are paid to the claimant and reported under subparagraph (l).

(4) Reports shall also contain information identifying those open or pending claims which were contained in a prior report.

(5) Reporting entities should report all claims arising from acts or omissions occurring in this state, even where the claimant is not a Tennessee resident. In the event that a judgment reported by a reporting entity is from a court outside of this state, the reporting entity should notify the Department of such so that it can be properly noted on its report.

(6) Any column left blank by the reporting entity will be assumed to be "not applicable" if any information other than that requiring currency data, and if currency data is required, will be assumed to be zero (0).

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101 ,*et seq.*, and 56-54-110.

0780-01-84-.06 Reporting Requirements for Counsel for Claimants

Counsel for claimants asserting claims covered by this Chapter shall provide, by March 1 of each year, information about fee arrangements with claimants to the commissioner. Such information shall include the following:

(1) The name of the reporting attorney;

(2) The address of the reporting attorney;

(3) The name, telephone number and electronic mail address of the reporting attorney;

(4) The number used to internally identify or a claim number for each individual and unique claim;

(5) The date of the incident that was the proximate cause of the claim;

(6) The claimant's social security number; and

(7) The portion of any payment received by claimant's counsel for each individual and unique claim number pursuant to either a settlement or judgment.

The information reported under this Rule will only be reported in the aggregate to the speaker of the senate and the speaker of the house of representatives and will be kept confidential by the commissioner.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.07 Format for Submitted Data

(1) All data submitted to the commissioner on the claims data file shall be submitted on a Compact Disk or three-and-one-half inch (3½") computer data disk in the form created by the commissioner. All data submitted to the commissioner from counsel for claimants shall be submitted on a form adopted by the commissioner.

(2) All data located in columns shall be in alpha-numeric format unless otherwise stated. When using numeric data, only regular decimal formats will be acceptable. No compressed or binary (small integer or large integer) data will be accepted as valid.

(3) All date data shall be Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2)-digit month (with leading zeros when necessary), a slash (/), a two (2)-digit day (with leading zeros when necessary), a slash (/), and a four (4)-digit year.

(4) Social Security Number data shall be presented in the following format: the first, second and third characters must be numerals, the fourth character must be a hyphen (-), the fifth and sixth characters must be numerals, the seventh character must be a hyphen (-), and the eighth, ninth, tenth and eleventh characters must be numerals.

(5) License number data shall be presented in the format of the entire license number expressed numerically without any other characters [e.g.--hyphens (-)] or spaces within the license number.

All currency data shall be in units of U.S. dollars rounded to the nearest whole dollar amount. Leading zeros and the dollars signs are not necessary but may be used so long as the currency fields are consistent.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.08 Penalty

Any reporting entity that fails to comply with the provisions of this Chapter shall be subject to a civil penalty of one hundred dollars ($100) per day. Any reporting entity subject to this civil penalty may request an administrative hearing to contest the penalty assessment. The prevailing party of any such hearing will be entitled to the costs of bringing or defending the action.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.09 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Chapter which can be given effect without the invalid provisions or application. To this end all provisions of this Chapter are declared to be severable.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

0780-01-84-.10 Effective Date

The effective date of this Chapter or any amendments thereto shall be as set forth below.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

Appendix A is amended by deleting the existing table in its entirety and replacing it with the following table:

APPENDIX A

SPREADSHEET NAME, FIELD REQUIREMENT OR COLUMN HEADING	DESCRIPTION OF DATA SOUGHT	TECHNICAL FORMATTING OF DATA SOUGHT
Pending Claims Spreadsheet	This should contain information for pending claims that have been asserted through a lawsuit or by other means. This should not include information on claims that have been paid pursuant to a settlement or judgment.	
Closed Claims Spreadsheet	This should contain information for claims that have been paid pursuant to a settlement or judgment, including claims that were settled or adjudicated with the condition of open medical treatment for the claimant.	
Entity Name	This should be the name of the entity submitting the information required by T.C.A. §§56-54-101, *et.*	Data shall be in alpha-numeric format and reflect the name of the entity as found in the entity's

	seq, and this Chapter.	licensure materials (e.g.— insurance company's certificate of authority).
Entity Address 1	This should be the address of the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter.	Data shall be in alpha-numeric format and reflect the home office address of the entity.
Entity Address 2	This field may be used if the address of the entity is more than one (1) line, but may be left blank if the address of the entity is only one (1) line.	Data shall be in alpha-numeric format and reflect the home office address of the entity.
Entity Address City	This should be the address city of the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter.	Data shall be in alpha-numeric format and reflect the home office address city of the entity.
Entity Address State	This should be the address state of the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter.	Data shall be in alpha-numeric format and reflect the home office address state of the entity. The address state shall be two (2) capitalized characters conforming to the United States Postal Service's state abbreviations conventions.
Entity Address ZIP Code	This should be the address ZIP Code of the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter.	Data shall be in numeric format and reflect the home office address zip code of the entity. This field shall be presented as a five (5) digit numeral. If applicable, the five (5) digit zip code may be followed by the United States Postal Service's "+4" code, in which case the sixth character must be a plus sign (+), with the seventh, eighth, ninth and tenth characters being numerals.
Entity Contact Person	This should be the name of a contact person representing the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter.	Data shall be in alpha-numeric format, with the first name of the contact person stated first, followed by a space, followed by the last name of the contact person.
Entity Contact Telephone Number	This should be the telephone number of a contact person representing the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter.	Data shall be in alpha-numeric format. The first three (3) characters must be the area code. The fourth character must be a hyphen. The fifth, sixth, and seventh characters must be the three (3) digit prefix that follows the area code. The eighth character must be a hyphen. The ninth, tenth, eleventh, and twelfth characters must be the last four (4) digits of the phone number. If there is an extension that should be

		entered, an "x" or an "X" shall be placed in the thirteenth position followed immediately by the extension number with a maximum of six (6) alpha-numeric characters.
Entity Contact Electronic Mail Address	This should be the electronic mail address of a contact person representing the entity submitting the information required by T.C.A. §§56-54-101, *et. seq*, and this Chapter	Data shall be in alpha-numeric format and reflect the full electronic mail address of the entity contact person.
Claim and Incident Identifier	This should be the identifier assigned to the claim or incident, if companion claims have been made by a claimant, by the insuring entity, self-insurer, facility or provider.	Data shall be in alpha-numeric format and as found in the reporting entity's records.
Type of Health Care Professional	This should list the type of health care professional against whom the claim was made.	Data shall be chosen from a listing of health care professional options found on the commissioner's form.
Health Care Professional Specialty (if applicable)	This should list the medical specialty of the health care professional against whom the claim was made.	Data shall be chosen from a listing of health care professional specialty options found on the commissioner's form.
License Number	This should be the health care institution or provider's license or certificate number.	Data shall be presented in the format of the entire license number expressed numerically without any other characters [e.g.—hyphens (-)] or spaces within the license number.
Health Care Facility Type	This should be the type of health care facility where the medical malpractice incident occurred.	Data shall be chosen from a listing of health care facility options found on the commissioner's form.
Health Care Facility Location	This should be the primary location within a facility where the medical malpractice incident occurred.	Data shall be in alpha-numeric format and reflect the primary location within a facility where the medical malpractice incident occurred.
Incident Location City	This should be the address city of the location where the medical malpractice incident occurred.	Data shall be in alpha-numeric format and reflect the address city where the medical malpractice incident occurred.
Incident Location County	This should be the address county of the location where the medical malpractice incident occurred.	Data shall be in alpha-numeric format and reflect the address county where the medical malpractice incident occurred.
Date of Incident	This should be the date on which the incident that was the proximate cause of the medical malpractice claim.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/),

		and a four (4) digit year.
Type for Claim	This should be the reason for the medical malpractice claim. The reporting entity must use the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank.	Data shall be in alpha-numeric format and use the allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank.
Date of Notice	This should be the date on which notice was provided to the insuring entity, self-insurer, facility or provider.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year.
Injured Person's Sex	This should be the gender of the injured person.	Data shall be chosen from a listing of gender options found on the commissioner's form.
Injured Person's Age	This should be the age of the injured person on the date of the incident.	Data shall be presented as a numeral and should reflect the age of the injured person as of the date of the incident.
Claimant's Social Security Number	This should be the Social Security Number held by the person making the claim.	Data shall be presented in the following format: the first, second and third characters must be numerals, the forth character must be a hyphen (-), the fifth and sixth characters must be numerals, the seventh character must be a hyphen (-), and the eighth, ninth, tenth and eleventh characters must be numerals. (XXX-XX-XXXX)
Severity of Malpractice Injury	This should be the severity of the malpractice injury using the National Practitioner Data Bank severity scale.	Data shall be in alpha-numeric format and reflect the severity of the malpractice injury using the National Practitioner Data Bank severity scale.
Policy Limits	This should be the policy limits of the medical professional liability insurance policy covering the claim.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Asserted Damages (other than set forth in lawsuit)	This should include an amount that has been asserted against a reporting entity in a manner other than by filing a lawsuit.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Damages Claimed by Lawsuit".
Damages Claimed by Lawsuit	This should include the amount of damages asserted against a reporting entity in a lawsuit.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Asserted

		Damages (other than set forth in lawsuit)".
Date of the Filing of a Lawsuit	This should be the date that any lawsuit was filed asserting damages against a reporting entity.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year. Data should be entered in this column only if data is also entered in the column titled "Damages Claimed by Lawsuit".
Amount Paid by Settlement	This should include the total amount paid pursuant to a settlement between the injured person and the insuring entity, self-insurer, facility or provider. If there is more than one (1) defendant, this should include the total indemnity paid by or on behalf of this facility or provider.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Judgment".
Amount Paid by Judgment	This should include the total amount paid pursuant to a judgment against the insuring entity, self-insurer, facility or provider. If there is more than one (1) defendant, this should include the total indemnity paid by or on behalf of this facility or provider.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Settlement".
Amount Paid by Alternative Dispute Resolution	This should include the total amount paid pursuant to alternative dispute resolution, such as arbitration, mediation, private trial and other common dispute resolution methods, by the insuring entity, self-insurer, facility or provider. If there is more than one (1) defendant, this should include the total indemnity paid by or on behalf of this facility or provider.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Settlement".
Did Settlement Occur Prior to Trial	This should state whether the settlement was reached before or after the date of the trial.	Data shall be chosen from a listing of yes or no options found on the commissioner's form.
Economic Damages Paid Pursuant to Judgment	This should include the amount of the judgment that was identified as economic damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Non-Economic Damages Paid Pursuant to Judgment	This should include the amount of the judgment that was identified as non-economic damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Punitive Damages Paid	This should include the amount of	Data shall be presented as currency

Pursuant to Judgment	the judgment that was identified as punitive damages.	data in units of U.S. dollars rounded to the nearest whole dollar amount.
Economic Damages Paid Pursuant to Settlement or Other	This should include insuring entity's or self-insurer's best estimate of the amount of economic damages included in the settlement.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Non-Economic Damages Paid Pursuant to Settlement or Other	This should include the insuring entity's or self-insurer's best estimate of the amount of non-economic damages included in the settlement.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Attorney Fees Paid to Defense Counsel	This should include the amount that was paid to defend the medical or professional malpractice claim. This should not include the expense related to expert witness fees, court costs, deposition costs, and other legal expenses.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Expert Witness Fees Paid in Defense of Claim	This should include the expert witness fees that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Court Costs Paid in Defense of Claim	This should include the court costs that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Other Legal Fees and/or Defense Costs	This should include any other legal fees or defense costs not specifically identified that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Date of Final Indemnity Payment (if applicable)	This should be the date in which the insuring entity, self-insurer, facility or provider made its final payment to the injured person.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year.
Date Claim Was Closed	This should be the date in which final action was taken by the insuring entity, self-insurer, facility or provider to close the claim.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year.
Name of Attorney Representing the Claimant	This should name the attorney(s) representing the claimant and who received attorneys fees from representing the claimant.	Data shall be in alpha-numeric format, with the first name of the attorney stated first, followed by a space, followed by the last name of the attorney.

Authority: 2008 Tenn. Pub. Act Ch. 1009, T.C.A. §§ 56-2-301, 56-54-101, *et seq.*, and 56-54-110.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance on 12-18-08, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on:	06/30/08
Notice published in the Tennessee Administrative Register on:	07/15/08
Rulemaking Hearing(s) Conducted on: (add more dates).	08/13/08

Date: 12-19-08

Signature: Leslie A Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner

DENISA MANN
STATE OF TENNESSEE NOTARY PUBLIC
ROBERTSON COUNTY, TENN.
My Commission Expires SEPT. 7, 2010

Subscribed and sworn to before me on: 12-19-08

Notary Public Signature: Denisa Mann

My commission expires on: 9-7-2010

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

1-30-09
Date

Department of State Use Only

Filed with the Department of State on:	2/3/09
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Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

On August 13, 2008, a rulemaking hearing was held by LaCosta N. Wix, Assistant General Counsel, by designation of Leslie A. Newman, Commissioner, at the offices of the Department of Commerce and Insurance. This hearing, conducted pursuant to the requirements of the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et. seq.*, allowed the Commissioner of Commerce and Insurance and her designees to hear public comments and responses to the proposed amendments. The amendments are being promulgated pursuant to Tenn. Code Ann. §§ 56-54-101, *et seq.*

The Commissioner solicited comments from the public by causing notice of the hearing to be published in accordance with the requirements of Tenn. Code Ann. § 4-5-203. The Commissioner received written comments prior to and during the rulemaking hearing.

Comment 1
Rule 0780-01-84-.05(3)(e)

It was commented that any information received by the Department concerning policy limits should not be shared with the NAIC as this information is not generally discoverable, and, if disclosed, may adversely affect future settlement negotiations.

Agency Response to Comment 1

TCA § 56-54-106(2) provides that any information concerning policy limits will not be included in any information shared with the NAIC.

Comment 2
Appendix A

It was commented that the category of "Total Legal Expenses" is redundant, and that the information this field is seeking is covered in other fields. It was commented that leaving this field in the report creates the danger of the double reporting of certain information.

Agency Response to Comment 2
The Department agrees that this field creates confusion and the possibility of reporting errors. This field will be removed from the reporting form.

Comment 3
Appendix A

It was commented that some of the new requirements are problematic in that, depending on the nature of the claim and especially for pending claims, it is difficult to discern certain information such as the sex or age of the claimant or the location in the hospital where the incident took place. It was suggested that the reporting form account for this by including in the drop-down menu the option of "unknown" in these instances.

Agency Response to Comment 3

The Department agrees with this comment and will add the option of "unknown" to the relevant drop-down menus. The Department urges reporting entities to include this information to the extent possible in order so that the Department's report can be as complete as possible.

Comment 4
Appendix A

It was commented that the requirement that the city and county location of the incident being reported does not account for those incidents that happen out of state.

Agency Response to Comment 4

The Department agrees with this comment and will add provide a drop-down menu containing the 95 counties and including an option for "out of state" for this field.

Comment 5
General Comment

It was commented that there will be instances involving an in-state facility, treatment from an in-state doctor, but the claimant is from another state and the case will be heard in another state or in federal court. In these instances the case will be subject to the laws of another state but the premium tax will have been paid in Tennessee. It was asked whether the Department would include language in the report to address these instances.

Agency Response to Comment 5

Reporting entities should report all claims arising from acts or omissions occurring in this state, even where the claimant is not a Tennessee resident. In the event that a judgment reported by a reporting entity is from a court outside of this state, the reporting entity should notify the Department of such so that it can be properly noted on its report.

Comment 6
General Comment

It was commented that other states who produce similar reports allow for the submission of the data in encrypted emails. It was asked whether Tennessee would accept the data reported in that form.

Agency Response to Comment 6

The Department is currently in the process of establishing a method by which reporting entities can report information on an encrypted basis. Once this method is available, the Department will notify reporting entities of this option.

Addendum

Regulatory Flexibility Act Analysis
of Impact on Small Businesses

The Department of Commerce and Insurance has considered whether the proposed amendments in this notice of rule making hearing are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed amendments are not anticipated to have a significant economic impact affecting small businesses.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

1. The type or types of small businesses that might be impacted by these proposed rules may include solo-practicing or partnerships of licensed professionals that are deemed to be reporting entities per Tenn. Code Ann. §§ 56-54-101, *et seq.*

2. There should be no additional administrative costs, as the information requested for the completion of the report is data which the entities and licensed professionals should already be keeping for their own business purposes.

3. The only adverse impact that will be borne by small businesses after the enactment of these rules is the time involved in compiling the information and transmitting it to the Insurance Division.

4. Alternative means to accomplishing the legislative intent, which is to have accurate and complete data concerning medical malpractice claims and expenses, does not exist. The Insurance Division must ensure that every reporting entity is reporting in the same manner to achieve consistent and reliable data.

5. The legislation which extended the reporting requirement was based on an NAIC model law, but there is no corresponding model regulation. These rules and their requirements are designed solely to administer the specific requirements of the legislation passed by the Tennessee General Assembly; however, many states have instituted similar legislation, administered bulletins, and adopted rules with the same objective in mind.

6. Small businesses could not be exempted. The Department must ensure that all reporting entities comply with these regulations in order to ensure a complete report of the information sought of the General Assembly.

Additional Information Required by Joint Government Operations Committee

Submitted pursuant to TCA 4-5-226(i)(1):

Brief Summary:

The purpose of this Chapter is to govern the medical malpractice claims reporting required by Tenn. Code Ann. §§ 56-54-101, *et seq.* The rules give specific direction for the reporting entities on the mandatory data they are required to report. The rules dictate the content of the reporting form provided to the reporting entities by the Department. Last session, the General Assembly chose to have the statute which authorized the annual Medical Malpractice Claims and Expenses Report extended beyond the year 2008, and amended the statute in order to give more depth to the content of the report. The changes in these rules have mostly to do with the data that is to be collected. The new rules move the due date for data submission from April 1, to March 1 of each year. Some of the new data fields include such requests as the sex of the claimant, the location (city and county) of the incident, the severity of the injury, the location in the health care facility where the incident occurred. Additionally, going forward, the report will be broken down by area of practice.

Citation:

This Chapter is authorized by Tenn. Code Ann. §§ 56-54-101, *et seq.* Tenn. Code Ann. § 56-54-110 specifically gives the Commissioner authority to promulgate rules to carry out the statute.

Identification of persons most affected by this rule:

This Chapter will mostly affect the reporting entities: those insurers who write medical malpractice insurance in this state, self-insuring providers and health care facilities, and attorneys for the claimants in medical malpractice law suits. However, most every reporting entity should have filed reports in years past, the only difference this Chapter makes is in asking for additional information.

Attorney General opinions or judicial rulings:

There are no Attorney General opinions or judicial rulings relevant to the subject of this Chapter.

Estimate of increase or decrease in revenue:

This Chapter should cause no increase or decrease in state revenues or expenditures. The coming year, 2009, will be the fifth year of the report. The statute does allow for the collection of civil penalties against reporting entities who fail to make a timely and complete report. The penalty may be in the amount of $100 per day of late or incomplete filing after the due date.

Identification of the agency representative:

For information on this Chapter, contact:

LaCosta Wix, Assistant General Counsel
500 James Robertson Parkway, 2nd Floor
Nashville, Tennessee 37243
(615) 741-3388
Lacosta.wix@state.tn.us

Identification of the agency representative who will explain these rules:

LaCosta Wix, Assistant General Counsel, Department of Commerce and Insurance